REMARKS

Claims 1-21 and 24-30 are currently pending.

The Office Action rejected claims 1-6, 8, 9, 13-17, 20, 21 and 24-29 under 35 U.S.C. § 103 as obvious over U.S. patent application publication no. 2003/0108501 ("Hofrichter"); claims 1-3, 5-15, 17-21 and 24-29 under 35 U.S.C. § 103 as obvious over U.S. patent 5,955,415 ("Gutierrez") and claims 7, 10-12 and 18 under 35 U.S.C. § 103 as obvious over Hofrichter in view of Gutierrez. In view of the following comments, Applicants respectfully request reconsideration and withdrawal of these rejections.

The claimed invention requires the polyalkyleneimine/mineral particle weight ratio to be 0.1-0.0001. Neither Hofrichter nor Gutierrez teach or suggest this required ratio. The Office Action recognized this fact when it stated that the cited references do not teach the requisite components in the specific proportions as required by the instant claims. (Office Action at pages 4 and 6).

The significance of the required polyalkyleneimine/mineral particle weight ratio is amply demonstrated by the first Rule 132 declaration in this case. The declaration demonstrates that compositions containing the required polyalkyleneimine/mineral particle weight ratio possess improved smoothness properties. The declaration also demonstrates that compositions containing polyalkyleneimine/mineral particle in a ratio falling outside the claimed ratio do not posses such improved smoothness properties.

Thus, the facts of record in this case are (1) neither Hofrichter nor Gutierrez teach or suggest the required ratio; and (2) compositions having the required ratio

possess improved smoothness properties as compared to compositions which do not have the required ratio. These facts demonstrate the novelty and non-obviousness of the claimed invention.

In making the pending § 103 rejections, the Office Action asserted that the data in Applicants' Rule 132 declaration were insufficient to rebut the alleged *prima facie* case of obviousness because the data were not commensurate in scope with the claims. However, this assertion completely ignores paragraph 9 of the Rule 132 declaration. Paragraph 9 indicates that the improved smoothness properties are indeed commensurate in scope with the claims.

In an attempt to justify its complete disregard of Paragraph 9, the Office Action asserted that Paragraph 9 constitutes only Applicants' opinion unsupported by any factual data. However, this assertion is incorrect.

Paragraph 9 is based not only on the data set forth in the Rule 132 declaration but also on the declarant's experience. Thus, various factual bases exist for Paragraph 9. Under such circumstances, the Office Action's complete disregard of Paragraph 9 was erroneous --- this factually supported paragraph must be considered as evidence. See, MPEP § 716.01 (c) III. When Paragraph 9 is properly considered, it is clear that the claimed invention is neither taught nor suggested by the cited art. This is particularly true for new claim 30 which is directed to a smaller range of polyalkyleneimine/mineral particle ratios.

In view of the above, Applicants respectfully request reconsideration and withdrawal of the § 103 rejections.

Furthermore, the Office Action does not set forth a *prima facie* case of obviousness. Gutierrez neither teaches nor suggests the invention compositions. For example, page 26 of the present specification distinguishes between shampoos/conditioners and bleaching compositions. Thus, the requirement that the claimed composition is a shampoo or a conditioner is a real, compositional limitation which must be satisfied. This limitation means, at least, that bleaching agents are not present in the composition so as to make it a bleaching composition. The significance of this limitation is that Gutierrez's compositions must contain significant amounts of peroxygen bleaching agents. In fact, Gutierrez's goal is to produce compositions having "improved peroxygen bleach stability resulting in controlled bleaching action on stains." (Col. 1, lines 11-13). Accordingly, the claimed compositions which are not bleaching compositions are neither taught nor suggested by Gutierrez.

Moreover, Gutierrez neither teaches nor suggests shampoos or conditioners containing PEI and solid mineral particles. Gutierrez discloses that only "detergent compositions" contain "detergent builders." (See, col. 13, lines 65-67). Gutierrez's detergent compositions differ from his personal or hair care products. (See, col. 44, lines 46-67). Thus, Gutierrez never teaches nor suggests that detergent builders (which could possibly be mineral particles) can be added to shampoos or conditioners.

Rather, Gutierrez states that "the PEI chelants/sequestrants and their salts of the present invention are useful in a variety of detergent, personal product ....which are available in many types and forms." (Col. 44, lines 46-50). Thus, Gutierrez merely discloses that PEI is suitable for use in shampoos and conditioners. This is nothing more than Gutierrez discloses earlier in his patent in his discussion of the

prior art (at col. 2, lines 60-62; col. 3, lines 1-3) where he states that shampoos containing PEI but not detergency builders were known.

Gutierrez neither teaches nor suggests that PEI can be combined with the claimed mineral particles in shampoos or conditioners, let alone combined in shampoos or conditioners in the claimed ratios. In fact, Gutierrez expressly states that such compositions do not contain "detergent builders" (see, for example, col. 2, line 56 et seq.) and, thus, actually teaches away from combining solid mineral particles and PEI in such compositions. For this reason alone Gutierrez neither teaches nor suggests the claimed invention.

Furthermore, with respect to claims 27 and 28, these claims require the presence of less than 5% of the claimed solid mineral particles. In contrast, Gutierrez discloses that his detergent compositions contain between 5-80% detergent builder. (Col. 14, line 1). Thus, Gutierrez neither teaches nor suggests the subject matter of these claims because Gutierrez neither teaches nor suggests compositions having so little detergent builder.

Hofrichter also fails to teach or suggest the invention compositions. Hofrichter merely states that a suspending agent can optionally be present in his compositions, and that PEI could possibly be such a suspending agent. Nothing in Hofrichter teaches, suggests, or recognizes any benefits associated with actually combining PEI and solid mineral particles in a shampoo or a rinse-out conditioner. In other words, given only the general guidance provided by Hofrichter, one skilled in the art would not be motivated to combine the claimed solid mineral paraticles with

PEI with the expectation that a useful, beneficial shampoo or rinse-out conditioner would result.

This is particularly true given that the claims require solid mineral particles and PEI to be present in a specific ratio: a specific ratio which is neither taught nor suggested by Hofrichter. Nothing in Hofrichter would lead one skilled in the art to combine solid mineral particles and PEI in the required concentrations in shampoos or rinse-out conditioners, meaning that Hofrichter would not lead one skilled in the art to the claimed compositions or methods.

For all of the above reasons, Applicants respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103.

Applicants believe that the present application is in condition for allowance. Prompt and favorable consideration is earnestly solicited.

Respectfully submitted,

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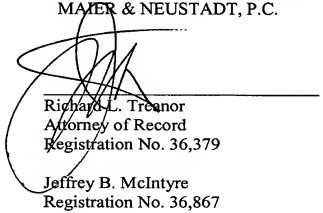

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